

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 48 of 1996

WITH

SECOND APPEAL No 49 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VIJAYKUMAR VINODRAI SHAH

Versus

VINODRAI SUKHLAL SHAH

Appearance:

MR SURESH M SHAH for Appellant
MS KHYATI P HATHI for Respondent No. 1, 2

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 28/06/96

ORAL JUDGEMENT

1. Heard learned counsel for the respective parties at the admission stage. The appeals are admitted. Mr. P.V. Hathi for Ms. Khyati P. Hathi waives service on behalf of the respondents.

2. At the joint request of learned counsel for the parties these appeals are taken up for final hearing today.

3. The short question of law involved in these appeals is whether the view taken by the lower appellate court as regards its own jurisdiction is correct in law.

4. The lower appellate court has referred to and relied upon section 28-A(2) of the Bombay Civil Courts Act, 1869, which provides that an order made by a Civil Judge in exercise of powers conferred upon him under sub-section (1) shall be subject to appeal to the High Court or the District Court according to the amount or value of the subject matter exceeds or does not exceed Rs.20000/-.

5. It is pertinent to note that the lower appellate court has decided this matter on 28th February 1996 and the trial court decision is dated 18th December 1993.

6. The aforesaid provision pertaining to the appeal arising from a decision of the trial court provides for an appeal to the District Court if the amount or the value of the subject matter does not exceed Rs.20000/-. However, this provision had been amended prior to the decision of the trial court, and has obviously escaped the attention of the lower appellate court.

7. By an amendment which came into effect on 11th November 1993 (by Gujarat Act 19 of 1993), the figure of "Rs.20000/-" has been replaced by "Rs.50000/-". In other words, if the subject matter of the dispute does not exceed Rs.50000/-, the appeal shall lie to the District Court.

8. On the facts of the present case the District Court has rejected the appeals simply on the ground that since the value of the subject matter exceeds Rs.20000/-, it had no jurisdiction to entertain the appeal. It is amply clear that by virtue of the amendment the jurisdiction of the District Court has been raised upto Rs.50000/-. It is also clear that the lower appellate court has not recorded any finding (in the absence of any

contention in this regard) that the value of the subject matter exceeds Rs.50000/-, and or for that reason also it would have no jurisdiction to entertain the appeal.

9. In the premises aforesaid, it is obvious that the view taken by the lower appellate court was not correct in law and the lower appellate court could not have dismissed the appeal on the basis of the relevant provision which did not exist or was not applicable on the date of the trial court decision.

10. In the premises aforesaid, the impugned judgement and decree in these appeals are quashed and set aside. Regular Civil Appeal No.129/93 and 130/93 are restored to file and are remanded back to the District Court for decision on merits and in accordance with law. It is clarified that it shall be open to the contesting parties to raise such contentions including fresh contentions not taken earlier as may be available to them in law.

12. The appeals are, therefore, accordingly allowed with no order as to costs.
